

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

S. JAIN, for herself, and as
parent of and for her son "A",
a minor,

Plaintiff,

-vs-

BUTLER ILLINOIS SCHOOL
DISTRICT 53, et al.,

Defendants.

Case No. 17 C 00002

Chicago, Illinois
October 5, 2017
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiffs: MUSLIN & SANDBERG
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Chicago, Illinois 60603

LAW OFFICES OF FRED R. HARBECKE
BY: MR. FREDRICK RAHN HARBECKE
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For the Defendants: ANCEL GLINK DIAMOND BUSH
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1 APPEARANCES: (Continued)

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1 THE CLERK: 17 C 02, Jane versus Butler Illinois
2 School District 53. Motion hearing and motions.

3 MR. SANDBERG: Good morning, your Honor. Craig
4 Sandberg.

:35AM 5 MR. HARBECKE: Fred Harbecke, local counsel for
6 plaintiff.

7 MS. ELRABADI: Good morning, your Honor. Naderh
8 Elrafadi for the Badlanis.

:35AM 9 MS. BEDNAREK: Good morning. Lucy Bednarek on
10 behalf of the school district.

11 MS. SCHNAKE: And Kate Schnake, S-C-H-N-A-K-E, on
12 behalf of the defendants Massey and Roselli.

13 THE COURT: So what do we have?

14 MR. SANDBERG: Your Honor, if I may speak.

:36AM 15 I filed a motion for leave to file an additional
16 appearance in this case. And also, I'm seeking leave to file
17 a response to the motion to withdraw just to address some
18 things while the Court still has, I suppose, jurisdiction
19 over Mr. --

:36AM 20 THE COURT: I think I have a motion for leave to
21 file under seal, is that correct?

22 MR. SANDBERG: What's that?

23 THE COURT: I think I have a motion to file under
24 seal, is that right?

:36AM 25 MR. HARBECKE: Mr. Caro. Yes, your Honor.

1 MR. SANDBERG: I'm not sure what all that is,
2 Judge.

3 If I can also add that I learned yesterday, much to
4 my surprise, that Mr. Caro, although there hasn't been a
:36AM 5 formal attorney's lien filed in the matter, has -- is
6 asserting that in the event of his withdrawal, he retains
7 some interest in this case that, as your Honor knows, isn't
8 viable. There isn't presently a complaint on file and the
9 discovery is closed.

:37AM 10 And so, those are some of the issues that I think
11 are necessary while the Court still has Mr. Caro around.

12 Ms. Jain has no interest, to be clear, that Mr.
13 Caro continue to represent her in this case. Obviously we
14 can address Mr. Harbecke's issue because he's here only as
:37AM 15 local counsel.

16 THE COURT: Well, let's see --

17 MR. SANDBERG: But I'm not sure whether or not --
18 as it relates to my response and anything associated with
19 that, it doesn't really relate to --

:37AM 20 THE COURT: How many attorneys do we have on file
21 for the plaintiff?

22 MR. HARBECKE: One attorney plus myself as local
23 counsel.

24 THE COURT: Okay. And --

:37AM 25 MR. SANDBERG: Mr. Caro had filed his appearance

1 shortly after the complaint, back in January of this year,
2 and then in or around April I think he realized that because
3 of the nature of where he was practicing, that he needed to
4 have someone to comply with the local rules, and that's how
5 Mr. Harbecke got involved. The local rules require --

6 THE COURT: Is that right?

7 MR. HARBECKE: That's correct, your Honor.

8 MR. SANDBERG: I don't fully understand, because
9 the address on file on Pacer for Mr. Caro is not a Florida
10 address and that's where he's residing. So I'm not sure how
11 we got to that particular issue. Obviously there's a whole
12 host of --

13 THE COURT: I think the address he has on file is
14 Oak Brook, is that right?

15 MR. SANDBERG: For Mr. Caro?

16 THE COURT: I'm trying to see here -- oh, no. I'm
17 looking at the plaintiff. Mr. Caro, yes, Santa Rosa Beach.

18 MR. SANDBERG: I know that's where he's at now.

19 THE COURT: Well, are you still local counsel for
20 Mr. Caro in this case?

21 MR. HARBECKE: I am, your Honor.

22 THE COURT: Have you had any communication with him
23 about his pending motion?

24 MR. HARBECKE: Very little, other than the fact
25 that I have seen the stip -- or the affidavit or whatever

1 that he wants to submit under seal.

2 MR. SANDBERG: That's something I have not yet
3 seen, your Honor.

:39AM

4 One of the things, also, that I'm interested in is
5 -- in responding to the motion to withdraw is obviously
6 seeking attorneys' fees, including receiving the file within
7 seven days, so that I can review it for purposes of preparing
8 the Fifth Amendment complaint.

:39AM

9 I, like your Honor's order -- I'm not sure what was
10 being pled. And so, I need to know what discovery exists in
11 addition to anything else that's in the file. And I would
12 like additional time then to file the amended complaint,
13 which I'm sure counsel doesn't --

:39AM

14 THE COURT: Well, what is it you suggest I do?
15 You're telling me all the things you would like and you're
16 interested in. What is it you suggest I do? I mean, I have
17 before me a motion.

18 MR. SANDBERG: Right. I have --

:40AM

19 THE COURT: Frankly, right now in the movant's
20 absence -- and the real movant in this case is the attorney
21 who is seeking to withdraw -- I'm not inclined to grant the
22 motion.

:40AM

23 First, it comes at a time when it clearly would be
24 prejudicial to the client. I mean, it comes some two weeks
25 after I gave him an extension on his request to file an

1 amended complaint and, I don't know, ten days before the
2 deadline for filing the amended complaint.

3 If he's to withdraw now, he would leave his clients
4 in a lurch. You would have to come in, or some other
:41AM 5 attorney, and seek a further extension to file an amended
6 complaint. And, frankly, that's just not a situation in
7 which an attorney should be allowed to withdraw.

8 He should see this through until either he obtains
9 an extension so a new counsel can come in, or he files an
:41AM 10 amended complaint. He can't leave his client in a lurch with
11 very little time for a new attorney to come in and meet the
12 Court's extended deadline, second deadline, for filing an
13 amended complaint. Because the problem with denying his
14 motion is that it makes it difficult for you to come in --

:41AM 15 MR. SANDBERG: Correct.

16 THE COURT: -- and take over the case.

17 MR. SANDBERG: Right. And I --

18 THE COURT: So what is it you want me to do?

19 MR. SANDBERG: I'm not sure if we could fashion
:41AM 20 this remedy. But what I believe should happen or could
21 happen is, if you grant me leave to file my additional
22 appearance so that I can then represent Ms. Jain, or the
23 plaintiff, which is generally including the minor -- if your
24 Honor can remove Mr. -- grant Mr. Harbecke's motion to
:42AM 25 withdraw and remove Mr. Caro from his representation of Ms.

1 Jain at this time in order to thus allow your Honor to then
2 consider the concerns I have regarding Mr. Caro that I intend
3 on raising -- hope to raise in a response to that motion to
4 withdraw. So it's not really an opposition to his withdrawal
5 because, as I indicated earlier, Ms. Jain does not want him
6 to continue to represent her.

7 If I could -- if part of that is that the Court
8 compel Mr. Caro from --

9 THE COURT: I can't remove him from representing
10 her and deny his motion to withdraw. Either he represents
11 her or he doesn't.

12 MR. SANDBERG: Okay.

13 Well, then, grant me leave, enter and continue his
14 motion to withdraw, allow me to file a response to that.

15 THE COURT: Let me ask you something. What is it
16 you're going to file in response?

17 I'm not adjudicating an attorney's lien at this
18 point in time. First of all, there's nothing to lien.
19 There's been no recovery. The case isn't over. So, I can't.
20 I would have no facts upon which to adjudicate an attorney's
21 lien at this point. That's something that, if it happens,
22 will have to happen later. And it may not happen in the
23 context of this case; it may be a separate lawsuit
24 altogether.

25 MR. SANDBERG: Okay.

1 THE COURT: Your client, if I allow you leave to
2 file your appearance here, may want to file a crossclaim
3 against him, may want to file a complaint in the ARDC, may
4 want to do a lot of things.

:43AM

5 At this point -- and I make no ruling, but at this
6 point it seems to me that he's being irresponsible, at the
7 least. If he filed this lawsuit knowing he could not
8 personally appear, knowing that there was no guarantee that
9 the judge hearing the case would allow him to appear by phone
:44AM 10 on each and every occasion that the case was before the
11 Court, and if he then engaged local counsel but failed to
12 give him any direction or authority or responsibility to act
13 on the client's behalf -- which, I take it, is your position,
14 is that right?

:44AM

15 MR. HARBECKE: That's correct, your Honor.

16 THE COURT: Okay. Then he really hasn't complied
17 with the local counsel rule and he's being totally
18 irresponsible. But that is really a side issue here. I
19 mean, what's before me is, how do we move this case forward.

:44AM

20 Do you want to replace this attorney or not?

21 MR. SANDBERG: I do, your Honor.

22 THE COURT: Okay.

23 MR. SANDBERG: Could we --

:45AM

24 THE COURT: I'll grant you leave to file an
25 additional appearance, okay? Do that promptly, after the

1 close of this hearing, formally.

2 So you've now been granted leave to appear.

3 MR. SANDBERG: Thank you.

4 THE COURT: Does your client wish to contest her
:45AM 5 prior counsel's motion to withdraw, either of them?

6 MR. SANDBERG: To get him out of the case, she
7 doesn't contest that.

8 THE COURT: To get them out of the case? Well, if
9 they withdraw, that's what they're doing, they're getting out
:45AM 10 of the case.

11 MR. SANDBERG: Right.

12 THE COURT: All right. If there's no opposition,
13 the motions to withdraw by both local counsel and lead
14 counsel are granted.

:45AM 15 MR. SANDBERG: Okay.

16 As part of my -- as part of granting the motion to
17 withdraw and my filing an additional appearance, if the order
18 can compel Mr. Caro to turn over the file to me within seven
19 days?

:46AM 20 THE COURT: Draft an order.

21 MR. SANDBERG: A separate order, your Honor? It's
22 not going to be part of the minute order?

23 THE COURT: I'll put it in a minute order, but you
24 should draft a separate order for me to enter so it's clear
:46AM 25 on the record and so Mr. Caro has been advised, both by the

1 minute order and by the Court's separate order, that he has
2 an obligation to turn the file over.

3 MR. SANDBERG: Okay.

4 Could I get a short extension on the motion -- on
:46AM 5 the deadline for filing the fifth amended complaint, just so
6 that I have an opportunity to review the file?

7 I have a general understanding as to how I
8 anticipate claims be filed, but for the sake of everybody
9 that's here, it may be that upon my review I find it's
:47AM 10 necessary to triage this case to some degree, which may
11 include, in addition to any different claims -- may require
12 dismissing certain defendants, which I don't know at this
13 point.

14 As your Honor knows, I'm in a position where
:47AM 15 discovery is closed and your Honor had indicated no
16 extensions, which I can certainly understand the Court's
17 position at this time, but that being so, it kind of
18 doubles-down the importance of my having that file.

19 THE COURT: Okay.

:47AM 20 Give me 14 days, Imelda.

21 THE CLERK: October 19th.

22 THE COURT: October 19th file your amended
23 complaint. If you can, without violating the rules, file
24 your amended complaint on or before that date. Absent that,
:48AM 25 the case will be dismissed with prejudice.

1 Anything else?

2 MS. BEDNAREK: No, your Honor.

3 MS. SCHNAKE: No.

4 MR. SANDBERG: Thank you, your Honor.

:48AM

5 MR. HARBECKE: Thank you.

6 THE COURT: Okay. We'll have a status hearing
7 21 days, please.

8 THE CLERK: October 26th at 9:00 a.m.

9 THE COURT: Okay. I think that's all we need to
10 do.

:49AM

11 I'm going to enter an order also granting Mr. Caro
12 leave to file his motion to withdraw under seal that contains
13 information that's privileged and has absolutely no bearing
14 on the merits of the case, is, therefore, not something that
15 opposing counsel needs to see. It has to do with his
16 relationship with his client and nothing else.

:49AM

17 Is there any objection to that?

18 MS. BEDNAREK: No objection.

19 MS. SCHNAKE: No objection.

:49AM

20 MS. ELRABADI: No objection.

21 THE COURT: Okay. That will be the order. Thank
22 you.

23 MR. SANDBERG: Thank you, your Honor.

24 (Which were all the proceedings heard.)

25

CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/ Mary M. Hacker

October 16, 2017

Mary M. Hacker
Official Court Reporter

Date